

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.10.2018

Pronounced on : 09.11.2018

CORAM :

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No. 26465 of 2018
and
W.M.P.No.30757 of 2018

D.Shanmuga Raja Petitioner

vs.

1. The Principal Secretary to Government,
Government of Tamil Nadu,
Secretariat, Chennai - 600 009.
2. The Vice-Chancellor,
University of Madras,
Chepauk, Chennai - 600 005.
3. The Controller of Examinations,
University of Madras,
University Centenary Building,
Chepauk, Chennai - 600 005. Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of declaration to declare that the Regulation No. 7.8.2 of the Integrated Common Regulations of the University of Madras in null and void.

For Petitioner : M/s. J.T.Rajasuriya
For Respondents: Mr.C.Munnusamy
Spl. Govt. Pleader for R.1
: Mr. L.P.Shanmugasundaram
Spl. Govt. Pleader, for R.2 & R.3

O R D E R

(Order of the Court was made by SUBRAMONIUM PRASAD, J.)

The petitioner has filed the instant writ petition for a writ of declaration or any other writ or order to declare regulation 7.8.2 of the Integrated Common Regulation of University of Madras as null and void.

2. The petitioner is an Advocate by profession. He joined B.A Criminology and Police Administration degree course in 2013. The course was for a duration of three years. He appeared for fifteen arrear papers in May 2018. The results were declared. He cleared ten out of the fifteen, but failed in the remaining five papers.

3. The petitioner applied for revaluation of the papers in which he failed. It is stated that he tried to pay the fee for revaluation, but found that revaluation was not permitted in view of regulation of 7.8.2 of the Integrated Common Regulation of University of Madras. Regulation 7.8 reads as under:-

"Re-totaling, Revaluation and Photocopy of the Answer Scripts:-

7.8.1. Re-totaling: All UG students who appeared for their semester examinations are eligible for applying for re-totaling of their answer scripts.

7.8.2. Revaluation: All current batch students who have appeared for their semester examinations are eligible for Revaluation of their answer scripts. Passed out candidates are not eligible for Revaluation.

7.8.3. Photocopy of the answer scripts: students who are apply for revaluation can download their answer scripts from the University website after fifteen days from the date of publication of the results."

4. A perusal of 7.8.2 would show that, only those students who are in the current batch and appeared in their semester examinations alone are eligible for revaluation of their answer scripts. Passed out candidates are not eligible for revaluation.

5. The petitioner therefore has challenged Rule 7.8.2 on the ground that it violates Article 14 of the Constitution of India. Notices were issued to the respondents on 08.10.2018. The respondents have entered appearance. When the counsel of respondents were asked as to why revaluation is available only to the students who are in the current batch and not to passed out candidates, there was no answer.

6. Firstly, the petitioner has not passed out. He has only completed the course and he had fifteen papers in arrears. He had cleared ten papers but failed in five papers. The petitioner cannot therefore be called as a passed out candidate. A person can be called as a passed out candidate only when he is cleared all the papers in the three years.

7. The University is treating students, who have completed the three years course, but have not passed all the papers in B.A Criminology and Police Administration degree, as students who have passed out," on the analogy that when a

student completes three years, he would be presumed to be a student, who has passed out. This interpretation of the University would be violative of Article 14. Revaluation should be available to all such students who have appeared in the examinations regardless of the fact that they have exceeded the duration of three years. There is no rational to treat students who have completed three years, but have not cleared all the papers, differently.

8. It is now settled law that rules can be struck down on the ground of manifest arbitrariness if the classification is irrational. An irrational classification is manifestly arbitrary and can be struck down as violative of Article 14 [Nikesh Tarachand Shah Vs Union of India (2018) 11 SCC 1]. Manifest Arbitrariness means a law being disproportionate, excessive or otherwise being manifestly unreasonable, or when it is not fair, not reasonable, discriminative, not transparent, capricious, biased, with favoritism, or nepotism and not in pursuit of promotion of healthy competition and equitable treatment. A Rule which has been framed irrationally and / or, without adequate determining principle is susceptible to be struck down on the touchstone of Article 14 of the Constitution of India.

9. The Hon'ble Supreme Court of India in Shayara Bano Vs Union of India, (2017) 9 SCC 1 has observed as under:-

"62. Article 14 of the Constitution of India is a facet of equality of status and opportunity spoken of in the Preamble to the Constitution. The Article naturally divides itself into two parts-(1) equality before the law, and (2) the equal protection of the law. Judgments of this Court have referred to the fact that the equality before law concept has been derived from the law in the UK, and the equal protection of the laws has been borrowed from the 14th Amendment to the Constitution of the United States of America. In a revealing judgment, Subba Rao, J., dissenting, in State of U.P. v. Deoman Upadhyaya [State of U.P. v. Deoman Upadhyaya, (1961) 1 SCR 14 : AIR 1960 SC 1125 : 1960 Cri LJ 1504] , AIR p. 1134 para 26 : SCR at p. 34 further went on to state that whereas equality before law is a negative concept, the equal protection of the law has positive content. The early judgments of this Court referred to the "discrimination" aspect of Article 14, and evolved a rule by which subjects could be classified. If the classification was "intelligible" having regard to the object sought to be achieved, it would pass muster under Article 14's anti-discrimination aspect. Again, Subba Rao, J., dissenting, in Lachhman Dass v. State of Punjab [Lachhman Dass v. State of Punjab, (1963) 2 SCR 353 : AIR 1963 SC 222] , SCR at p. 395, warned that: (AIR p. 240, para 50)

or an anxious and sustained attempt to discover some basis for classification may gradually and imperceptibly deprive the Article of its glorious content."

He referred to the doctrine of classification as a "subsidiary rule" evolved by courts to give practical content to the said Article."

10. The interpretation given by the University that the revaluation cannot be extended to those students who have completed the three years duration of the course if accepted, would result in rendering Rule 7.8.2 as being violative of the Article 14 of the Constitution of India, as there is no intelligible differentia to treat those students who have not cleared all the papers, but have completed the three year duration of the course from those students who have not completed three years of the course differently for the purpose of revaluation of papers.

11. In view of the above it has to be held that a student who has not passed all the papers cannot be termed as a student who has "Passed Out". A person even though has completed three years, but has not cleared all the fifteen papers must be treated as a student who has appeared in the semester examination. "Passed out" candidates can only be those who have cleared all the papers in the course.

12. Admittedly, the petitioner has not cleared all the papers in B.A Criminology and Police Administration course. He has failed in five of the fifteen papers. In view of the above the writ petition is accordingly allowed and the respondents are directed to revalue the papers of the petitioner. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

pkn/gsp

To

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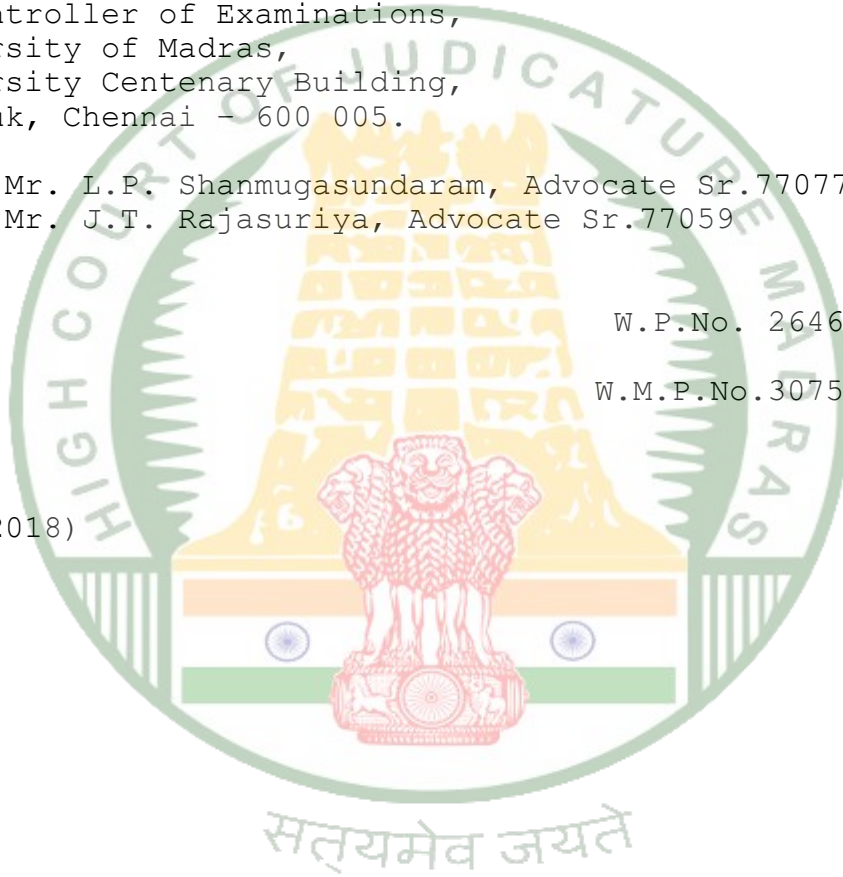
+ 1 cc to Mr. L.P. Shanmugasundaram, Advocate Sr.77077

+ 1 cc to Mr. J.T. Rajasuriya, Advocate Sr.77059

W.P.No. 26465 of 2018
and

W.M.P.No.30757 of 2018

SR(CO)
EU(27/11/2018)



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